

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 30-05, Housing – Workforce Housing Program

Bill 30-05, Housing – Workforce Housing Program, sponsored by Councilmember Silverman, is scheduled to be introduced on October 11, 2005. A public hearing date will be announced at the introduction of this bill.

Bill 30-05 would establish a workforce housing program, administered by the Department of Housing and Community Affairs. The Bill would define the purposes of the program and the population who the program is intended to serve, establish procedures to administer the program, and authorize the County Executive to set certain program parameters, including income eligibility standards, sale and rent control periods, and maximum sale prices and rents, by regulation.

The memo from Councilmember Silverman on ©13-14 discusses the purposes of the workforce housing program, spells out the major elements of this bill, and explains the bill's relationship to Zoning Text Amendment 05-16, to be introduced simultaneously.

This packet contains:

Bill 30-05
Legislative Request Report
Memo from Councilmember Silverman

<u>Circle #</u>
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Bill No. 30-05
Concerning: Housing – Workforce
Housing Program
Revised: 10-4-05 Draft No. 4
Introduced: October 11, 2005
Expires: April 11, 2007
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Silverman

AN ACT to:

- (1) establish a workforce housing program, administered by the Department of Housing and Community Affairs;
- (2) define the purposes of the program and the population who the program is intended to serve, and establish procedures to administer the program;
- (3) authorize the County Executive to set certain program parameters, including income eligibility standards, sale and rent control periods, and maximum sale prices and rents, by regulation;
- (4) define, by reference to certain mandatory and optional zoning provisions, where workforce housing must be located; and
- (5) generally provide for the operation of a County workforce housing program.

By adding

Montgomery County Code
Chapter 25B. Housing Policy
Article V, Workforce Housing

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Chapter 25B is amended by adding Article V, Workforce Housing:

Article V. Workforce Housing.

25B-23. Definitions.

In this Article, the following words have the following meanings:

- (a) Area-wide median income means the latest published income level determined to represent the median income for the Washington area by the U.S. Department of Housing and Urban Development, adjusted for household size.
- (b) Consumer Price Index means the latest published version of the Consumer Price Index for all Urban Consumers (CPI-U) of the U.S. Department of Labor, or any similar index designated by regulation.
- (c) Date of original sale means the date of settlement for purchase of a workforce housing unit.
- (d) Date of original rental means the date that the first lease of a workforce housing unit takes effect.
- (e) Department means the Department of Housing and Community Affairs.
- (f) Developer means a person or other legal entity that seeks to develop a workforce housing project.
- (g) Director means the Director of the Department or the Director's designee.
- (h) Dwelling unit means a building or part of a building that provides complete living facilities for one family, including at a minimum facilities for cooking, sanitation, and sleeping.
- (i) Housing Initiative Fund means the fund established under Section 25B-9.
- (j) Workforce housing project means a project where at least 10 percent of

the dwelling units, not counting any moderately priced dwelling units (MPDUs) and any resulting bonus density units, are sold or rented to households with incomes at or below 120% of the area-wide median income.

(k) Workforce housing unit means a dwelling unit in a workforce housing project that is subject to rent limits or sales controls under this Article.

(l) Program means the workforce housing program.

25B-24. Workforce housing program.

(a) Establishment. The Department must establish and administer a workforce housing program.

(b) Purpose. The purpose of the program is to promote the construction of housing affordable to households with incomes at or below 120% of the area-wide median income. The construction of that housing is intended to:

(1) allow households with incomes at or below 120% of the area-wide median income to have greater housing choices in the County;

(2) increase the availability of housing in the County for public employees and other workers whose income cannot support the high cost of housing that is located close to their workplace and who, as a result, are increasingly priced out of housing opportunities;

(3) assist County employers in reducing critical labor shortages of skilled and semi-skilled workers by providing housing that will be accessible to the workers' workplaces; and

(4) reduce traffic congestion by shortening commute distances for employees who work in the County but who otherwise would

live elsewhere.

(c) Relationship to other affordable housing programs. This program is intended to complement the moderately priced dwelling unit (MPDU) program under Chapter 25A and other County programs designed to promote affordable housing.

(d) Requirement. A developer of any subdivision with 35 or more dwelling units at one location must build the number of workforce housing units that are expressly required in any zone under Chapter 59.

(e) Regulations. The County Executive must adopt regulations under method (1) to administer this program. These regulations:

- (1) must set maximum sale prices and annual rent limits, sale price and rent ranges (which must promote a variety of different prices or rents at each workforce housing location), minimum unit type and bedroom requirements, and income eligibility standards;
- (2) must govern notice to the Department of sales and rentals, foreclosures, and other relevant procedural matters; and
- (3) should, wherever possible, be similar to or at least consistent with the regulations that govern the MPDU program.

25B-25. Execution of agreement; building permit issuance.

(a) Agreement.

- (1) After the developer of a workforce housing project has obtained approval from the Planning Board of a site plan that includes the number of workforce housing units required under any applicable provision of Chapter 59 and all other necessary regulatory approvals, the Director and the developer must execute an agreement assuring compliance with this Article by the developer and any successor in interest. The Director must attach a copy of

the approved site plan to the this agreement.

(2) The agreement must incorporate a staging plan for the construction of workforce housing units, the mix of dwelling unit sizes and types, and the selling price or annual rent for each unit. The staging plan must require all workforce housing units to be built before or at the same time as the other dwelling units. Where appropriate, the agreement must reflect conditions required as part of other regulatory approvals.

(b) *Issuance of building permit.* The Director of Permitting Services must not issue a building permit for any development where workforce housing units are required under Chapter 59 until the agreement required by subsection (a) is executed. After an agreement is executed under subsection (a), the Director must certify to the Director of Permitting Services before a building permit is issued that all applicable requirements of this Article have been met. If all workforce housing units are not built before or at the same time as other dwelling units as required in the staging plan, the Director of Permitting Services may:

- (1) withhold any later building permit for any part of the same development until all workforce housing units designated in the staging plan are built;
- (2) issue a stop work order, effective until all workforce housing units designated in the staging plan are built; or
- (3) withhold any use and occupancy permit for other units in the development until all workforce housing units designated in the staging plan are built.

25B-26. Alternative location agreement.

(a) The Director may approve a workforce housing agreement, in addition

to the agreement required by Section 25B-25, that allows an applicant for development of a high-rise residential building, instead of building some or all of the required number of workforce housing units on-site, to provide at least the same number of units at another location in the same planning policy area (as defined in the County Growth Policy), only if the Director finds that:

- (1) the public benefit of locating at the proposed alternative location outweighs the value of locating workforce housing units in each applicable development; and
- (2) building the workforce housing units at the proposed alternative location will further the objective of providing a broad range of housing opportunities throughout the County.

(b) To satisfy the requirements of this Section, an applicant may:

- (1) build, or convert from non-residential use, the required number of new workforce housing units at a site approved by the Director;
- (2) buy, encumber, or transfer, and rehabilitate as necessary, existing market rate housing units that meet all standards for use as workforce housing units; or
- (3) return to workforce housing unit use, and rehabilitate as necessary, existing workforce housing units for which price controls have expired.

(c) Each agreement under this Section must include a schedule, binding on the applicant, for timely completion or acquisition of the required number of workforce housing units.

25B-27. Control of sale prices; rent limits; income eligibility; foreclosures.

(a) Sales; control period. The sale price of a workforce housing unit must be controlled under this subsection for 10 years after the date of original

sale. During the applicable control period, a workforce housing unit must only be sold to an individual with a household income that does not exceed 120% of the area-wide median income or a lower amount set by regulation.

(b) Resale price during control period. Except in a foreclosure proceeding, a workforce housing unit constructed or offered for sale under this Article must not be resold during the applicable control period for a price greater than the original selling price plus:

- (1) a percentage of the unit's original selling price equal to the increase in the cost of living, as determined by the metropolitan area Consumer Price Index;
- (2) the fair market value of capital improvements made to the unit between the date of original sale and the date of resale;
- (3) an allowance for closing costs which were not paid by the initial seller, but which will be paid by the initial buyer for the benefit of the later buyer;
- (4) a percentage, set by regulation, of the unit's price appreciation since its most recent sale, which must not exceed 50% of the total price appreciation; and
- (5) a reasonable sales commission.

(c) Resale price after control period ends.

- (1) For the first sale of a workforce housing unit after the applicable control period ends that exceeds the allowable price specified under subsection (a), the seller must pay to the Housing Initiative Fund one-half of the excess of the total resale price over the sum of:

(A) the original selling price;

(B) a percentage of the unit's original selling price equal to the increase in the cost of living as determined by the metropolitan area Consumer Price Index;

(C) the fair market value of capital improvements made to the unit between the date of original sale and the date of resale; and

(D) a reasonable sales commission.

The Director must adjust the amount paid into the Housing Initiative Fund in each case so that the seller retains at least \$10,000 of the excess of the resale price over the sum of the items in subparagraphs (A)-(D).

(2) The Director must find that the price and terms of a sale covered by paragraph (1) are bona fide and accurately reflect the entire transaction between the parties so that the full amount required under paragraph (1) is paid to the Fund. When the Director finds that the amount due the Fund is accurate and the Director of Finance receives the amount due, the Director must terminate the controls imposed by this section and execute a release of all restrictive covenants.

(d) Limits on rents. Unless the unit was previously sold under subsection (c), any workforce housing unit built or offered for rent under this Chapter must not be rented for 99 years after the date of original rental at a rent greater than the rent allowed for workforce housing units under this Article and applicable regulations. Rent may include parking but does not include utilities when they are paid by the tenant. Different rents must be set when utility costs are paid by the owner and included in the rent. During the applicable control period, a workforce housing

unit must only be rented to an individual with a household income that does not exceed the limits set under this Article.

(e) Foreclosure. If a workforce housing unit is sold in a foreclosure proceeding begun by a lending institution, the Director must terminate the workforce housing controls and execute a release of all restrictive covenants if all proceeds of the sale, if any, that must be paid to the Housing Initiative Fund have been paid. If a foreclosure sale of a workforce housing unit occurs during the applicable control period, any price paid at the foreclosure sale that exceeds the price established under subsection (b), plus any reasonable costs and fees of foreclosure, must be paid into the Housing Initiative Fund. If a workforce housing unit is foreclosed after the control period, subsection (c) applies. If the unit sold was a rental unit, the Department must calculate the sale price that would have been permitted at the date of original rental as if the unit had been originally offered for sale.

(f) Bulk sales. This section does not prohibit the bulk sale or transfer of all or some rental workforce housing units if the buyer is bound by all covenants and controls on the workforce housing units.

25B-28. Compliance.

(a) Covenants.

(1) This Article applies to the owner, any successor in interest, assignee, or other person with a legal or equitable interest in the workforce housing unit. Before recording the plat for a workforce housing project, the owner must execute and record covenants assuring that:

(A) the restrictions of this Article run with the land;

(B) the covenants are binding on the owner, any assignee,

mortgagee, or later purchaser, and any other party that receives title to the property; and

(C) the County may create a lien to collect that portion of the sale price or foreclosure sale price of a workforce housing unit which exceeds the approved resale price.

(2) Any covenant executed to satisfy paragraph (1) must be senior to all instruments securing permanent financing.

(b) *Later deeds.* The grantor must clearly and conspicuously state, in any purchase and sale agreement and any deed or instrument conveying title to a workforce housing unit, and the grantee must clearly and conspicuously acknowledge, that the unit is subject to this Article and the restrictions in the covenants until all restrictions are released under Section 25B-27 or another provision of law. Any deed or other instrument conveying title to a workforce housing unit during the control period must be signed by both the grantor and grantee. When a deed or other instrument conveying title to a workforce housing unit is recorded in the land records, the grantor must cause to be filed in the land records a notice of sale for the benefit of the County in the form provided by state law.

(c) *Violations; enforcement.*

(1) Any violation of this Article or regulations adopted under it is a class A violation.

(2) An occupancy permit must not be issued for any building to any applicant, or a successor or assign of any applicant, for any construction which does not comply with this Chapter. The Director of Permitting Services may deny, suspend, or revoke any applicable building or occupancy permit if the Director finds

that the applicant or permittee has committed a violation of this Article. The Planning Board may revoke any previously approved preliminary plan of subdivision, site plan, or development plan, if the Board finds a violation of this Article.

(3) The Director may take legal action to stop or cancel any transfer of a workforce housing unit if any party to the transfer does not comply with all requirements of this Article. The Director may recover any funds improperly obtained from any sale or rental of a workforce housing unit in violation of this Article, plus costs and interest at the rate prescribed by law from the date a violation occurred.

(4) In addition to or instead of any other available remedy, the Director may take legal action to:

(A) enjoin a workforce housing unit owner who violates this Article, or any covenant signed or order issued under this Article, from continuing the violation; or

(B) require an owner to sell a workforce housing unit owned or occupied in violation of this Article to the County, the Housing Opportunities Commission, or an eligible person.

Sec. 2. Applicability.

Article V of Chapter 25B, as inserted by Section 1 of this Act, does not apply to any development for which a preliminary plan of subdivision was approved before this Act took effect.

Approved:

Thomas E. Perez, President, County Council

Date

LEGISLATIVE REQUEST REPORT

Bill 30-05

Housing – Workforce Housing Program

DESCRIPTION:	Creates a workforce housing program to serve households with incomes ranging from 80-120% of area median income. Requires the developer of any subdivision with 35 or more dwelling units to build the number of workforce housing units that are required in any zone under Chapter 59. Sets up, or authorizes the County Executive to set by regulation, eligibility standards, income limits, and maximum sale prices and rents.
PROBLEM:	Current County affordable housing programs are not aimed at households who are above the income limits for moderately priced dwelling units but who cannot afford market-rate housing.
GOALS AND OBJECTIVES:	To require a certain amount of housing affordable to households with incomes ranging from 80-120% of area median income to be built in certain urban areas.
COORDINATION:	Department of Housing and Community Affairs, Planning Board, Department of Permitting Services
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	Applies in municipalities where County has zoning authority.
PENALTIES:	Class A.



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

STEVEN A. SILVERMAN
COUNCILMEMBER

MEMORANDUM

October 7, 2005

To: Councilmembers

From: Councilmember Steven Silverman

A handwritten signature in black ink, appearing to be "SAS", written over the name "Steven Silverman".

Subject: Workforce Housing

A relatively new aspect of Montgomery County's affordable housing crisis is the lack of housing affordable to families whose income is near the median (currently approximately \$89,000 for a family of four). These families typically cannot afford an existing single family detached home, or a new townhome, and certainly cannot afford a new single family detached home. They are our teachers, firefighters, police, nurses, medical technicians, and other members of our workforce who provide indispensable services to our County.

All of us agree that we must find new ways to address this issue, as well as continue and expand our efforts to address the housing crisis facing our residents of moderate incomes, for whom the MPDU program is targeted, and the poorest of our residents, who are the focus of many of our existing housing programs.

I believe it is time to move to the next level in our affordable housing toolbox and create a workforce housing program. My proposal is intended to apply in our higher density areas near Metro stations. It will provide a way for two teachers, or two nurses, for example, to be able to afford a condo or townhouse in these "Smart Growth" areas where the bulk of our future new development will occur. Just as most families start with smaller housing, they will be able to build some equity and then in future years move up to a larger home, either in our urban areas or in single family detached neighborhoods.

The basic provisions of the legislation and accompanying zoning text amendment to be introduced are:

- The legislation mandates that 10% of new market rate housing in certain zones must be workforce housing which is basically housing affordable to people between 80-120% of area median income. Area median income for a family of 4 is approximately \$89,000; for a 2-person family it is approximately \$71,000. Using conservative assumptions, a

family of 4 at that income could afford to pay about \$300,000 for housing and a family of 2 at that income could afford to pay a little less than \$250,000.

- As an example, an apartment or condo building that has 87 market rate units, and 13 MPDUs (assuming the minimum 12.5% MPDU requirement is provided), would be required to build 8 workforce housing units (10% of the market rate units) for a total of 108 units in the building.
- In the zones where it applies, the workforce housing requirement will apply to subdivisions of 35 or more units for a control period of 10 years for sale and 99 years for rental; there will be a sliding scale partial equity recapture provision for sale units sold.
- Zones to be covered are those in Metro Station Policy areas with a density of 40 dwelling units per acre or greater.
- A developer will not receive any bonus market rate units along with the workforce housing. However, except for the new zone which will apply to properties near the Shady Grove Metro (discussed below), the density limits of the zone can be exceeded in proportion to the number of workforce housing units constructed, but no more than a 10% increase in any limits on the number of dwelling units or FAR limit. The zones' height limits could not be exceeded, although for those CBD zones which have two potential height limits, the higher one would be the maximum. Both standard method and optional method of development would require workforce housing.
- For the new zone recommended for most of the properties near the Shady Grove Metro, the TOMX2 zone, the workforce housing requirement would only apply to the optional method, but the height and density limits in this zone (which are established in the sector plan) may **not** be exceeded to provide the workforce housing.

I strongly support our land use plans which provide that much of the County's future growth will occur in areas near our METRO stations. At the same time, it is critical that residents of **all** incomes have the opportunity to live in these Smart Growth areas. With the strengthening of our MPDU law last year, and the inclusion of a workforce housing requirement, we can ensure that up to one-quarter of the new apartments, condominiums, and townhomes in these areas will be affordable to our residents of moderate incomes.

I believe that is a goal we can be proud of.